

PATENT
CASE 4233C3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Donald B. Appleby et al. : Group Art Unit: 1211
Serial No.: 08/360,184 : Examiner: E. White
Filed: December 20, 1994 :
For: **Polyol Polyester Synthesis**

DECLARATION UNDER 37 C.F.R. §1.608 OF ROBERT B. AYLOR

Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

I, ROBERT B. AYLOR, declare that:

1. I am currently employed by the assignee of the present application, The Procter & Gamble Company, and work in its Patent Division as a Senior Patent Counsel. I have been working for The Procter & Gamble Company in its Patent Division (hereinafter "the Patent Division") continuously since February 1960.

2. While working in the Patent Division, I have been responsible for the preparation and filing of numerous patent applications. In general, an invention is first disclosed to the Patent Division in a Development Record which is typically compiled by a person involved with development of the subject invention. The Development Record is assigned to a patent counsel

who is then responsible for reviewing the Development Record and, if appropriate, for the preparation and filing of a patent application for the disclosed invention.

3. I have reviewed the Declaration Under 37 C.F.R. §1.608 of Patrick J. Corrigan submitted herewith and Exhibit 45 discussed in the Corrigan Declaration. As set forth in the Corrigan Declaration, ¶15, Exhibit 45 comprises Development Record No. 7988 (the 7988 Development Record) entitled "A Process for Manufacturing Higher Polyol Fatty Acid Esters Using a Reduced Amount of Fatty Acid Lower Esters." The 7988 Development Record was prepared by Mr. Corrigan and submitted to the Patent Division for consideration on or about March 14, 1990. The 7988 Development Record was directed to processes for making sucrose polyesters using a molar ratio of fatty acid lower ester to sucrose of less than 10:1. The 7988 Development Record was received in the Patent Division on or about March 26, 1990, and I was designated as the patent counsel responsible for this Development Record.

4. Prior to July 3, 1990, I began preparing a patent application which incorporated the substance of the 7988 Development Record as well as other aspects of the sucrose polyester process then under development by the Appleby et al inventors. This patent application, entitled "Polyester Polyol Synthesis," was filed on September 11, 1990 and assigned Serial No. 07/580,706 (hereinafter the Appleby et al '706 Application) and is a parent patent application for the present Appleby et al U.S. Application Serial No. 08/360,184.

5. On or about July 3, 1990, I forwarded a draft of the Appleby et al '706 Application to the coinventor David J. Bruno, for review by the inventors. I have reviewed

Exhibit 59 and I confirm that it is an accurate copy of the Interoffice Memorandum which I prepared on or about July 3, 1990 and which served as a cover letter for forwarding the draft of the Appleby et al '706 Application to Mr. Bruno on or about July 3, 1990.

6. On or about July 18, 1990, I forwarded a revised draft of the Appleby '706 Application to the coinventor Corrigan for review by the inventors. I have reviewed Exhibit 60 and confirm that it is an accurate copy of the interoffice memo which I prepared on or about July 18, 1990 and which served as a cover letter for forwarding the revised draft of the Appleby et al '706 Application to Mr. Corrigan on or about July 18, 1990.

7. Between July 18, 1990 and the Sept. 11, 1990 filing date of the Appleby '706 Application, I further revised the Appleby '706 Application and incorporated additional information from the Appleby et al inventors into the Appleby '706 Application.

8. U.S. Patent No. 5,043,438 to Buter (the Buter patent), which is the subject of the concurrently filed Amendment and Request for Interference Under 37 C.F.R. §1.607, claims priority from European Patent Applications Nos. 89200371.6 filed on February 16, 1989 (the '371 European Application) and 89202931.5 filed November 20, 1989 (the '931 European Application). The '371 and '931 European Patent Applications also provide priority to European Patent Application No. 90200336.7 filed February 14, 1990 (the '336 European Application). The '336 European Application published on August 22, 1990, as evidenced by the European A1 Publication No. 383,404 A1, Exhibit 61. To the best of my knowledge, there is no earlier

published European application based on either the '371 European Application the '931 European Application, or the '336 European Application.

9. I did not become aware of the published European A1 Publication No. 383,404 A1 until subsequent to its August 22, 1990 publication date, which was well after I began preparing the Appleby et al Application and after the drafts were sent to Mr. Bruno on or about July 3, 1990 and Mr. Corrigan on or about July 18, 1990.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the present application or any patent issued thereon.

Respectfully submitted,

By: Robert B. Aylor
Robert B. Aylor

Date: 26 March 1999